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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/916,792	07/27/2001	Sean James Martin	GB920010043US1	8788
7590 03/29/2007 A. Bruce Clay IBM Corporation T81/503 PO Box 12195 Research Triangle Park, NC 27709			EXAMINER BLAIR, DOUGLAS B	
			ART UNIT 2142	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE			MAIL DATE	DELIVERY MODE
3 MONTHS			03/29/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/916,792	MARTIN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Douglas B. Blair	2142	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Status of Claims***

1. Claims 1-40 are pending in this application.

***Response to Arguments***

2. In view of the Appeal Brief filed on 12/15/2006, PROSECUTION IS HEREBY REOPENED. A new grounds of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

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Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 35 and 40 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 35 and 40 are directed towards computer programs consisting solely of software and therefore they do not fall into any of the categories of statutory subject matter.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 5, 7, 10-11, 14-15, 17-18, 22, 24, 27-28, 31-32, 34-35, 36-37, and 39-40 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Number 6,823,392 to Cherkasova et al.

7. As to claim 1, Cherkasova teaches a method for regulating access by users to a scarce resource, the method comprising the steps of: receiving a request for immediate access the scarce resource (col. 4, lines 20-46); determining, upon receipt of the request, whether the access level for said scarce resource is at a desired maximum (col. 4, lines 20-46); responsive to determining that said access level is currently at a desired maximum, automatically allocating an access slot, which specifies a time period during which the scarce resource may be accessed, said requester

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(col. 5, lines 6-14); and providing said requester with a notification of their allocated access slot, access being available to said requester at any point in the time period during which said allocated slot is enabled (col. 5, lines 6-14).

8. As to claims 18 and 35, they feature an apparatus and program for carrying out the process of claim 1 and are therefore rejected for the same reasons as claim 1.

9. As to claims 36, 39, and 40, the process disclosed by the applicant for accommodating a late request is identical to the process claimed in claim 1 and therefore is rejected for the same reasons as claim 1. The applicant only broadly claims tracking the interaction of a user associated with a scarce resource which is interpreted as tracking requests a concept clearly taught by Cherkasova.

10. As to claim 5, Cherkasova teaches a method wherein responsive to a requesting re-requesting access to a scarce resource, determining whether an access slot is enabled; and responsive to determining that the slot is enabled, granting access (col. 5, lines 6-14, it would be pointless to reserve a resource and not enable the reservation).

11. As to claim 22, it is rejected for the same reasons as claim 5.

12. As to claim 7, Cherkasova teaches diverting a requester to a first server hosting a scarce resource (server 12 in Figure 1).

13. As to claim 24, it is rejected for the same reasons as claim 7.

14. As to claim 10, Cherkasova teaches a method of tracking the number of users currently accessing the scarce resource (col. 4, lines 20-46); and comparing that number with a predetermined maximum value (col. 4, lines 20-46).

15. As to claim 27, it is rejected for the same reasons as claim 10.

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16. As to claim 11, the method for accommodating a late request is identical to the method claimed in claim 1 and is therefore rejected for the same reasons as claim 1.

As to claim 28, it is rejected for the same reasons as claim 11.

17. As to claim 14, Cherkasova teaches determining that a requester's slot is at an end; and refusing access to the scarce resource by the requester (col. 6, lines 21-23).

18. As to claims 15-17, they correspond to the same method performed in claim 1 and are therefore rejected for the same reason as claim 1. Any adjective can be used to describe the session but it is still the same method being performed to grant access to the request.

19. As to claims 31-32 and 34, they are rejected for the same reasons as claims 14-15 and 17.

20. As to claim 37, Cherkasova teaches a method wherein the request for access is a request for continued access, said request being the only interaction tracked (col. 4, lines 20-46).

### ***Claim Rejections - 35 USC § 103***

21. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

22. Claims 2-3, 6, 19-20 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 6,823,392 to Cherkasova et al in view of U.S. Patent Application Publication Number 2002/0083342 by Webb et al..

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23. As to claim 2, Cherkasova teaches the method of claim 1 including sending a cookie to client with access information (col. 6, lines 4-14); however Cherkasova does not explicitly teach the use of a ticket comprising access slot information.

Webb teaches a method of issuing a requestor with a ticket comprising access slot information at least part of said access slot information being used by said requester to determine when said allocated slot is enabled (paragraph 48).

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of Cherkasova regarding the regulation of access to a resource with the teachings of Webb regarding the use of a ticket because the ticket provides a method for the system to authenticate the use of the time slot (Webb, paragraph 48).

24. As to claim 19, it is rejected for the same reasons as claim 2.

25. As to claims 3 and 20, Cherkasova teaches access slot information comprising a start time for the access slot and an expiry time for the access slot (col. 6, lines 15-22).

26. As to claims 6 and 23, they feature similar limitations to claims 2 and 3 and are rejected for the same reasons as claims 2 and 3.

27. Claims 4 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 6,823,392 to Cherkasova et al in view of U.S. Patent Application Publication Number 2002/0059436 by Kubo.

28. As to claim 4, Cherkasova teaches the method of claim 1; however Cherkasova does not explicitly teach downloading an executable onto the requestor's computer.

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Kubo teaches downloading an executable program for preventing the requester from attempting to access a scarce resource until said requester's access slot has been enabled (paragraph 42, the applet).

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of Cherkasova regarding the regulation of access to a resource with the teachings of Kubo regarding the downloading of an applet because downloading an applet would reduce the amount of work performed by the server.

29. As to claim 21, it is rejected for the same reasons as claim 4.

30. Claims 12-13, 16, 29-30, 33 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 6,823,392 to Cherkasova et al in view of U.S. Patent Number 6,389,028 to Bondarenko et al..

31. As to claim 12, Cherkasova teaches the method of claim 1; however Cherkasova does not explicitly teach determining the average time spent accessing the resource and determining the length of access slots based on the average time.

Bondarenko teaches determining the average time spent accessing a scarce resource; and determining the length of the subsequent access slots based on the average time (col. 9, lines 18-54).

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of Cherkasova regarding the regulation of access to a resource with the teachings of Bondarenko regarding determining the average time spent accessing the resource and determining the length of access slots based on the average time



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because changing the length of the time slots allows for more efficient resource utilization (Bondarenko, col. 9, lines 18-54).

32. As to claim 29, it is rejected for the same reason as claim 12.

33. As to claim 13, Cherkasova teaches the method of claim 1; however Cherkasova does not explicitly teach chain of resources.

Bondarenko teaches determining that said scarce resource comprises a chain of resources (col. 9, lines 18-54).

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of Cherkasova regarding the regulation of access to a resource with the teachings of Bondarenko regarding a chain of resources because resources are sometimes distributed across the Internet (Bondarenko, col. 9, lines 18-54).

34. As to claim 30, it is rejected for the same reasons as claim 13.

35. As to claims 16 and 33, Bondarenko teaches a method wherein the access slot only applies to one of the resources in the chain and any other resource in said chain is accessible whether or not said slot is enabled (col. 9, lines 18-54).

36. As to claim 36, Cherkasova teaches the method of claim 36; however Cherkasova does not explicitly teach finding a resource in a chain of resources chain of resources.

Bondarenko teaches determining the position in a chain of resources (col. 9, lines 18-54).

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of Cherkasova regarding the regulation of access to a resource with the teachings of Bondarenko regarding a chain of resources because resources are sometimes distributed across the Internet (Bondarenko, col. 9, lines 18-54).

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37. Claims 8-9 and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 6,823,392 to Cherkasova et al in view of U.S. Patent Number 6,011,537 to Slotznick.

38. As to claims 8-9, Cherkasova does not explicitly teach diverting a request to a second server and providing the requester with entertainment while the resource is not available.

Slotznick teaches diverting a request to a second server and providing the requester with entertainment while the resource is not available (col. 24, line 9-49).

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of Cherkasova regarding allocating access to a resource with the teachings of Slotznick regarding the provision of entertainment to a waiting user because entertainment reduces the perceived wait time (Slotznick, col. 1, line 60-col. 2, line 11).

39. As to claims 25 and 26, they are rejected for the same reasons as claims 8-9.

### ***Conclusion***

40. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Douglas B. Blair whose telephone number is (571) 272-3893.

The examiner can normally be reached on 9:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on (571) 272-3868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Douglas Blair

DBB



ANDREW CALDWELL  
SUPERVISORY PATENT EXAMINER